

(Received via email)

From: Russell, Laura [lrussell@nib.org]

To: OIRA_DOCKET@omb.eop.gov

Cc: rulecomments

Subject: comments on the information collection aspects of the proposed rule

Sent: Mon 12/13/2004 2:40 PM

Dear Sir/Madam:

On behalf of Ray R. Fidler, Chairman of the NIB Board of Directors, I have been asked to submit the attached comments on the information collection aspects of the proposed rule. I have also, by way of this email, copied Janet Yandik, Information Management Specialist, Committee for Purchase.

Sincerely,

Laura C. Russell

Executive Assistant to Jim Gibbons

National Industries for the Blind

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December 13, 2004

Ms. Katherine Astrich, Policy Analyst
Desk Officer for the Committee for Purchase from
People Who are Blind or Severely Disabled
Office of Management and Budget
Office of Information and Regulatory Affairs
Eisenhower Executive Office Building
725-17th Street, NW
Washington, DC 20502

Reference: Docket Number 2004-01-01

Dear Ms. Astrich:

National Industries for the Blind (NIB) is pleased to submit comments on the information collection aspect of the proposed Rulemaking included in the referenced Docket. NIB is a private, not for profit corporation that has been designated by the Committee for Purchase from People Who are Blind or Severely Disabled (Committee) as one of the two Central Nonprofit Agencies (CNAs) under the Javits-Wagner-O'Day (JWOD) program (41 USC 46-48c.) As a CNA, one of the functions of NIB is to "Represent its participating Nonprofit Agencies (NPAs) in dealing with the Committee under the JWOD Act." (41 CFR 51-3.2(a)). As such, our comments are being submitted on behalf of both NIB (which is one of the affected parties) and the NPAs for the blind associated with NIB. We understand that many individual NPAs as well as the National Association for Employment of People who are Blind (NAEPB) are also planning to submit their own comments.

We understand and appreciate the Committee's desire to address the governance and compensation issues in view of the "recent isolated reports" in the media. We also note that the Senate Finance Committee and several states - including the states of New York and California - are currently in the process of reviewing various alternatives to address these same issues. In addition, the IRS is currently engaged in a special enforcement review related to the compensation issue which may result in its adoption of new compensation standards. Therefore, we believe it would be prudent for the Committee to await results of action by these governmental entities before adopting its final Rule, in order to avoid subjecting the JWOD NPAs to multiple levels of oversight with conflicting

***Enhancing opportunities for economic and personal independence
of persons who are blind, primarily through creating, sustaining and
improving employment.***



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Rules and deadlines established by the Congress, various states, IRS and the Committee. NIB associated NPAs have advised us of several issues with respect to the information collection aspect of the proposed Rulemaking that should be addressed:

- Numerous NPAs were created as a result of state statutes, are part of state government or otherwise controlled by state government. They have asked how the proposed Rule would not pre-empt the relevant state laws in numerous respects, including but not limited to, imposition of a Board structure and composition, methodology for selecting Board members and other governance details?
- Even NPAs which are not organs of the state government have noted that nonprofit organizations are organized under various state laws and governance issues are controlled by state law. They asked how the proposed Rule would not interfere with and improperly pre-empt matters historically and legally delegated to various states?
- The collection of the type of information covered by the proposed Rulemaking is a matter generally delegated by federal statute to the Internal Revenue Service (IRS.) See section 4958 of the Internal Revenue Code. The Department of Treasury has long enforced an extensive regulatory structure with which all nonprofit agencies including JWOD NPAs must comply. Indeed, the IRS is currently engaged in a widespread special enforcement review related to one aspect of the proposed Rule, to wit, excessive compensation to nonprofit officers and other related persons. Given this long standing jurisdiction of the IRS in these matters, the nonprofit agencies have asked whether the proposed Rule is duplicative of, and/or in conflict with, IRS authority and requirements?
- Many NPAs have advised that the hours required to fulfill the compliance reporting with respect to the proposed Rule greatly exceeds the 19 hours estimated by the Committee in the proposed Rulemaking. This is particularly true of the numerous NPAs which do not follow the federal government's fiscal year.

NIB also notes the following with respect to the collection of the requested information:

- The Committee plans to require filing this information by November 1st (for CNAs) and December 1st (for NPAs,) however, the required IRS Form 990 are due to the IRS only four and half months after the completion of the agency's fiscal year. In addition, while NIB and many NPAs follow the federal fiscal year ending September 30th, as noted above, other NPAs follow a different fiscal year, which is sometimes dictated by their own State requirements.
- For CNAs and NPAs that follow the federal fiscal year, the November 1st and December 1st deadlines respectively do not provide sufficient time to complete

annual audits and thus utilize the audited financial information. Therefore, there is a possibility that the information submitted to the Committee may be different than that submitted to IRS on Form 990 for the same fiscal year.

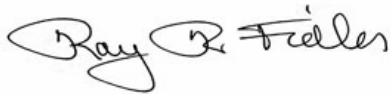
- NPAs with other fiscal years will be required to assemble this information on the basis of the federal fiscal year rather than simply providing the information that they submit to IRS. Such agencies will require significantly more than the 19 hours estimated by the Committee.
- As a former Chairman of an NIB associated NPA and one who has had a long-term commitment to the employment of people who are blind, I am personally concerned by the proposed Rule since it could have the un-intended consequence of loss of employment for people who are blind – the very individuals the JWOD program was created to assist - through no fault of theirs, by eliminating their jobs while taking no other action against those responsible for violating the Rules. This unintended consequence is likely because while the Rules contain the ultimate sanction of disallowing a non-complying NPA from participating in the JWOD program (thus resulting in loss of jobs for people who are blind,) they do not include any intermediate sanctions - similar to those utilized by IRS – on those officials violating the Rules in the first place.

Therefore NIB recommends that OMB carefully consider all of the comments received as well as the unintended consequences of the proposed Rule on employment of people who are blind described above in making its final decision on the new information collection requirement. In the event OMB decides to approve the new information collection requirement, we suggest that at the very least the deadlines in the proposed Rulemaking be altered to make them consistent with the current IRS deadlines – in each case four and half months after the end of that agency's fiscal year in order to ensure consistency and accuracy of data, minimize added cost and administrative burden on NPAs, and ensure effectiveness of the overall JWOD program. This will allow the CNAs and NPAs to submit identical financial information to both IRS and the Committee, with minimal additional administrative burden. This suggestion will also eliminate the potential for discrepancies in the information submitted to IRS and the Committee for the same fiscal year.

Please note that the above comments are intended to be responsive solely and exclusively to the "collection of information" aspect of the Committee's proposed rulemaking and request for comments, as that phrase is defined in 5 CFR 1320.3(c). NIB's comments, therefore, do not address any substantive or non-"collection of information" procedural aspects of the Committee's proposed rulemaking. NIB expressly reserves its right to submit such substantive comments in respect of this rulemaking, and intends to submit appropriate comments prior to the revised February 10, 2005 deadline established by the Committee. As part of this submission, NIB intends to propose self-governance alternative/s that would accomplish the objectives of the proposed Rulemaking, comply with all federal and state laws and regulations, and incorporate best in nonprofit

governance and compensation practices. NIB would be pleased to provide all recipients of this letter with a copy of those more significant comments.

We stand ready to address your questions while continuing to work with the Committee to ensure the integrity of the valuable JWOD program.

A handwritten signature in cursive script that reads "Ray Fidler". The signature is written in dark ink and is positioned above the printed name.

Ray Fidler, Chairman
NIB Board of Directors

cc: Janet Yandik, Information Management Specialist
Committee for Purchase from People Who are Blind or
Severely Disabled
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